

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

CGS, INC. AND UNITED STATES  
AVIATION UNDERWRITERS, INC.,

PLAINTIFFS,

VERSUS

CIVIL ACTION NO. 4:CV132-S-O

TELEDYNE-CONTINENTAL MOTORS,  
AIRCRAFT PRODUCTS DIVISION,

DEFENDANT.

MEMORANDUM OPINION DENYING  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This cause of action is before the court on the motion of the defendant for summary judgment. The plaintiff CGS, Inc. owned and operated a 1974 Cessna 210L aircraft, N219CG, which crash landed on March 20, 1991, at New Orleans International Airport. CGS is seeking damages for loss of use and excessive maintenance expenses due to an alleged defective engine supplied by the defendant. The plaintiff United States Aviation Underwriters, Inc. seeks to recover the insurance payment it made on the crashed aircraft.

SUMMARY JUDGMENT STANDARD

On a motion for summary judgment, the court must ascertain whether there is a genuine issue of material fact. Fed. R. Civ. P. 56(c). This requires the court to evaluate "whether there is the need for a trial--whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 250 (1986).

The United States Supreme Court has stated that "this standard mirrors the standard for a directed verdict...which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict. If reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed." Anderson, 477 U.S. at 250-51 (citation omitted). Further, the Court has noted that the "genuine issue" summary judgment standard is very similar to the "reasonable jury" directed verdict standard, the primary difference between the two being procedural, not substantive. Id. at 251. "In essence...the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 251-52. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict - `whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed.'" Id. at 252 (citation omitted). However, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the

facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. at 255.

#### FACTS

In early 1986, CGS obtained from Teledyne-Continental an engine, model IO520, to install into its 1974 Cessna 210L aircraft, N219CG. The engine was delivered to Greenwood Leflore Aircraft Service, and on May 9, 1986, it was installed in CGS's aircraft. CGS alleges that within a few months, Mr. Gary, the pilot, noticed excessive engine vibrations. Additionally, the aircraft was having abnormal maintenance problems, including cracked and leaking oil coolers, cracked and/or separated exhaust system components, and loss of cylinder head temperature probes. Teledyne recommended that the propeller be rebalanced. This was done by Condor Balancing in Houston, Texas. Condor indicated that the propeller was not out of balance.

In December of 1987, after some consultation with Teledyne, the airplane was tested by Epps Aviation based in Atlanta, Georgia. The aircraft was connected to a Chadwick Helmuth engine vibration analyzer. All exterior engine components, parts of the engine, and the structure of the airplane were tested and adjusted. The plaintiffs assert that since the vibrations persisted, and the work conducted by Epps eliminated external components, then obviously

there were internal causes for the vibrations. The defendant maintains that the engine vibrations were within the norm for an engine of that type in a Cessna 210L.

In May of 1988, the aircraft was tested by Teledyne at its Mobile, Alabama, facilities. No substantial changes were made. Later that summer, the airplane was taken to Jewell Aviation in Holly Springs, Mississippi, an authorized dealer/representative for Teledyne. Several modifications were made, which the plaintiffs allege did not alleviate the vibrations. The defendant argues that the plaintiffs lodged no further complaints after these adjustments, that the maintenance records reflect no more problems, and that the airplane did not crash until three years later.

It is undisputed that shortly after take off on March 20, 1991, the crankshaft in the Teledyne engine fractured. The pilot was able to glide to a landing, but ran into a wet patch of ground and nosed over, destroying the hull which totaled the plane. The cause of the fractured crankshaft is vigorously disputed by the parties.

The defendant theorizes that the plane crash was caused by improper engine case assembling after several cylinder head replacements. CGS's contract mechanic removed and replaced the engine's number two cylinder at least four times after Teledyne's last effort to repair the alleged unusual vibrations. The defendant's expert states that the crankshaft failed because of

fatigue cracks which were caused by excessive bending. The defendant's expert proposes that the bending was due to the failure of the CGS's mechanic to apply the proper amount of torque to the longbolts or throughbolts which clamp the two halves of the crankcase together. There is evidence of fretting at the contact point of the two halves of the crankcase which the defendant alleges proves that the throughbolts had not been properly tightened.

It is the plaintiffs' position that the crankshaft failure was due to the excessive vibrations which had been present from the time the engine was manufactured by the defendant and installed into CGS's airplane. The defendant counters that the plaintiffs cannot explain the cause of the vibrations or its causal relationship to the fractured crankshaft. The plaintiffs assert that they are not required to show the specific defect, but only have to produce evidence from which a jury could infer a defective quality.

#### Discussion

In order to recover on a theory of strict liability under Mississippi law, it must be established that: (1) the defendant placed a product in the market that was in a defective condition and unreasonably dangerous for its intended use; (2) the plaintiff was using the product in a manner that was reasonably foreseeable; and (3) the defective condition was the proximate cause of the

injury to plaintiff. See Mozingo V. Correct Manufacturing Corp., 752 F.2d 168, 176 (5th Cir. 1985).

[U]nder Mississippi law, it is unnecessary to prove a specific, identifiable defect in a cause of action based on strict liability, [but] Plaintiff must at least produce that minimal amount of circumstantial evidence that would allow a jury to infer a defective quality in the product. Mere proof of damage following the use of a product is not sufficient to establish liability. The doctrine of strict liability does not make a case for the Plaintiff merely by its pleading and is not the equivalent of the doctrine of res ipsa loquitur, which is a distinct and separate rule of circumstantial evidence.

Cather v. Catheter Technology Corp., 753 F.Supp. 634, 639 (S.D. Miss. 1991) (internal citations omitted). In Cather, the plaintiff "failed to offer any evidence whatsoever, expert or otherwise, of a design or manufacturing defect...." Id. 753 F.Supp. at 638. Here the plaintiffs have presented an affidavit and deposition testimony of their expert, Armond Edwards, who states that the crankshaft failure was not due to inadequate throughbolt torque, but the persistent excessive vibrations. This of course indicates a dispute as to a genuine issue of material fact.

The defendant argues that the plaintiffs' expert is not qualified to make such an opinion and has moved to have his affidavit struck. Mr. Edwards is a private consultant with nineteen years of experience with the United States National Transportation Safety Board investigating aviation accidents. He concluded that:

... the crankshaft failed as a result of a defective condition in the engine which produced excessive engine

vibrations, and which must have existed at the time the engine left the control of the manufacturer.

Additionally, the plaintiffs have submitted the report from the investigation conducted by National Transportation Board. The report by two registered professional engineers, Dr. Raymond Claxton and Ms. Jamie L. Petty-Galis, concluded that "the primary failure mode at the location of the crankshaft separation fracture was high cycle fatigue, [and that the] multiple fatigue fractures in the crankshaft were more probably a result of the vibration rather than a cause." Finally, the plaintiffs present evidence to contradict the defendant's theory of the cause of the crash.

The defendant asserts that Mr. Edwards has no engineering training, does not understand the working dynamics of a Chadwick Helmuth analyzer, and thus cannot render an opinion on the severity of the measured vibrations or draw a causal line between the vibrations and the failed crankshaft. The Federal Rules of Evidence provide:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. Rule 702

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. Rule 703

"Trial judges must be sensitive to qualifications of persons claiming to be experts." In re Air Crash Disaster at New Orleans, La., 795 F.2d 1230, 1233-34 (5th Cir. 1986). "The district court should, initially, approach its inquiry with the proper deference to the jury's role as the arbiter of disputes between conflicting opinions. As a general rule, questions relating to the bases and sources of an expert's opinion affect the weight to be assigned that opinion rather than its admissibility and should be left for the jury's consideration." Viterbo v. Dow Chemical Co., 826 F.2d 420, 422 (5th Cir. 1987) (citing Dixon v. International Harvester Co., 754 F.2d 573, 580 (5th Cir. 1985)). "We caution, however, that although credentials can be significant, they alone are not necessarily determinative." Christophersen v. Allied-Signal Corp., 939 F.2d 1106, 1112 (5th Cir. 1991). After careful consideration of the evidence submitted, the court finds Armond Edwards is qualified as an expert to render his opinion as to the cause of the crash. Accordingly, taking the evidence most favorably for the plaintiffs, the conflicting experts' opinions create a material issue of fact.

Finally, the defendant argues that the plaintiffs' claims for excessive pre-crash repair costs and loss of use of the aircraft are not recoverable in a product liability cause, and, alternatively, if brought under a breach of warranty theory, then the claims are barred by the six-year statute of limitation set



forth in § 75-2-725 Mississippi Code Annotated (1972). The defendant contends that the statute of limitations began running from the date when the transaction was entered into and not the date when the product's deficiency was discovered. It is not necessary for the court to address this argument, since the defendant failed to raise the statute of limitation issue as an affirmative defense. Federal Civil Procedure "[r]ule 8(c) characterizes a statute-of-limitations defense as an affirmative defense that is waived unless pleaded by the defendant." Davis v. Huskipower Outdoor Equipment Corp., 936 F.2d 193, 198 (5th Cir. 1991). The United States Supreme Court in East River S.S. v. Transamerica Delaval, 476 U.S. 858 (1986), held that a claim to recover for the injury to the defective product itself was not actionable under a theory of strict liability, but appropriate to be brought under a breach of contract or breach of warranty claim. Since the defendant has waived any statute of limitation problems with the plaintiffs' breach of warranty claim, then the application of East River is not necessary. Additionally, the court notes that the plaintiffs are seeking to recover damages associated with the loss of use of the airplane, destruction of the plane body, and expenses incurred due to the defective nature of the engine, which are distinct from the allegedly defective engine.

An order in accordance with this memorandum opinion shall be issued.

This \_\_\_\_\_ day of March, 1995.

---

CHIEF JUDGE